

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

EDDIE ARRINGTON,)
Plaintiff,) CASE NO. C05-469-JLR-MJB
v.) REPORT AND
JOSEPH CHALVERUS,) RECOMMENDATION
Defendant.)
_____)

On March 31, 2005, Plaintiff lodged a *pro se* complaint in this action pursuant to 42 U.S.C. § 1983. Plaintiff was granted leave to proceed *in form pauperis*, but this court declined to order service of his complaint because it contained deficiencies. On April 13, 2005, the Court issued an order declining service, which identified the deficiencies in plaintiff's complaint and granted him leave to file an amended complaint correcting the deficiencies. Dkt. # 7. On May 23, 2005, plaintiff filed an amended complaint wherein he alleged that defendant, who was his trial counsel, violated his constitutional rights by failing to adequately represent him. Dkt. #9. Plaintiff requested relief in the form of new trial and an attorney to adequately represent him. *Id.*

Because Plaintiff's amended complaint appeared to seek the vacation of his conviction or sentence, the Court issued an Order to Show Cause, on July 8, 2005, advising Plaintiff that a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254

REPORT AND RECOMMENDATION

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1 is the exclusive federal remedy to a state prisoner seeking release from confinement, or
2 vacation of his conviction or sentence from state court. Dkt. # 10. Plaintiff was further
3 ordered either to show cause why his § 1983 complaint should not be dismissed or to file
4 a § 2254 habeas petition, within thirty days of the date on which the order was signed.
5 *Id.* Thus his response was due by July 7, 2005. Plaintiff was also warned that failure to
6 timely correct the deficiencies or adequately show cause would result in a
7 recommendation of dismissal of this action. *Id.*

8 This Court finds that, to date, plaintiff has failed to respond to the June, 2005.
9 show cause order. Accordingly, the undersigned recommends dismissal of this case
10 pursuant to Fed. R. Civ. P. 41(b) for failure to comply with the Court's show cause
11 order. A propose Order accompanies this Report and Recommendation.

12 DATED this 3rd day of February, 2006.

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MONICA J. BENTON
United States Magistrate Judge